

BETWEEN

THE TOWN OF DURHAM, NEW HAMPSHIRE

AND

**THE AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES COUNCIL 93 AND ITS
APPROPRIATE AFFILIATE LOCAL 863**

JANUARY 1, 2007 TO DECEMBER 31, 2009

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ARTICLE 1

RECOGNITION

1. Whenever used in this Agreement, the word "Employee" shall refer only to a person or persons actively and regularly engaged in the Department's work and enrolled in the regular payroll of the Department.
2. The Town hereby recognizes that the Union is the sole and exclusive representative of all employees of the Public Works Department who are members of the Bargaining Unit as defined by the Public Employees Labor Relations Board. It is recognized that it is the Town's obligation to contact the Unit Employee Representative for the purpose of negotiations and amendment to any provision of this Agreement.
3. The Town agrees to include the Permanent Part-time Maintenance Worker I position as part of the bargaining unit. That position will receive benefits on a pro rata basis equal to the percentage of full time work (i.e. a 3/4 position receives 3/4 benefits except for health insurance which is provided after thirty (30) hours). The employee in this position will receive pay for a holiday (if it falls on his/her work day) equal to the number of hours usually worked on that day.

ARTICLE 3

DUES CHECKOFF

1. The Town agrees to deduct the local dues from all employees who are covered by this Agreement and who are Union members, and to send said dues along with a statement indicating who has paid these dues to:

Diane Shannon, Business Manager
AFSCME Council 93
8 Beacon Street
Boston, Massachusetts 02108

The Union will keep the Town informed of the correct name and address of the Treasurer of Local 863, AFSCME.

2. This deduction of dues shall be made on a biweekly basis and shall be sent monthly to the AFSCME Council.
3. No deductions of dues will be made by the Town unless an authorization card, including the amount and signed by the employee, shall have been filed with the Town.
4. The Union shall notify the Town one (1) month prior to any change in the amount of dues to be deducted. The Town and the Union agree that until further notice, bi-weekly dues to be deducted shall be \$13.72 per Union employee.

ARTICLE 5

MANAGEMENT OF MEMBERSHIP

1. Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after the date shall continue his/her membership in the Union during the duration of the Agreement.
2. Current nonunion employees are "grand-fathered" from the agency fee. All nonunion employees not "grand-fathered" shall pay an agency fee. The fee shall be the minimum according to the Union Charter and may not exceed the fee established by the Union Charter.

ARTICLE 7

SENIORITY

1. Seniority shall be defined as continuous full-time employment by the Department of Public Works. No employee shall be considered to have any seniority rights until he or she has completed the ninety (90) day probationary period, at which time the employee will have accrued ninety (90) days seniority.
2. Nothing in this Article shall be construed to limit the Town's ability to hire, promote, demote, or discharge employees. The intent of this Article is to demonstrate the Town's and the Union's recognition of seniority, as defined in Section 3 below.
3. Seniority, as defined in Section 1 of this Article, shall be a consideration only in the following types of actions:
 - a. Vacation Pick
 - b. Promotion
 - c. Layoff
 - d. Demotion

Choices of dates for vacation shall be granted to employees based upon seniority, with the most senior employee having first choice, the second most senior employee having second choice, and so on. All other current rules governing vacation pick shall remain in effect for the duration of this Agreement. Vacation leave will continue to be granted in accordance with Departmental scheduling needs and workload considerations.

Where qualifications are equal, seniority shall be the determining factor in promotion, demotion and layoff. Questions regarding the application of seniority shall be subject to the Grievance Procedure. A decision of the Director of Public Works shall be subject to the Grievance Procedure.

Where qualifications are equal, seniority shall govern in the selection of employees for layoffs and transfers. Where all experience, skills and past performance levels, as determined by the Director of Public Works, are equal for two employees, the employee with less seniority shall be laid off first. A decision of the Director of Public Works shall be subject to the Grievance Procedure.

It is recognized by the Town that length of service in a classification sometimes has a direct influence on the skills and proficiency level of the incumbent. For this reason, the Town has an interest in promoting from within where such promotion is based upon competition and has clearly defined criteria built into the promotion process. Where skills, proficiency levels, and experience in that type of work are equivalent, as determined by the Director of Public Works after testing and evaluating all candidates, seniority should govern.

It is recognized by the Town and the Union that the Town must hire or promote the most qualified workers available, in order to protect the public interest. Such public interest

ARTICLE 8

PROMOTIONS AND TRANSFERS

1. The Department reserves and shall have the right to make promotions and transfers.
2. Jobs to be filled through promotion shall be posted on department bulletin boards in which the vacancy occurs for a period of five (5) working days.
3. Vacancies in management positions which are excluded from the bargaining unit shall be posted on the department bulletin boards, provided, however, that appointments to these positions shall not be subject to the grievance procedure.
4. Wherever possible, promotions shall be made from the ranks of regular employees who are employed by the department in which the vacancy occurs.
5. Employees in the department where the vacancy occurs who are absent during the entire posting period shall be notified of the vacancy by Certified Mail and given the opportunity to apply for the position within the posting period.
6. Job posting shall include job specifications, rate of pay, job location, and also if it is a permanent job with a permanent rating.
7. The above procedure shall be followed in all permanent promotions and transfers.

ARTICLE 10

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to produce proper and equitable solutions of Grievances. All Grievances will be handled as provided in this Section.

The parties agree that such procedure shall be kept as informal and confidential as may be appropriate for the procedural level involved. Nothing in this Agreement shall prevent any employee from individually presenting any Grievance to his employer, without representation of the Union, provided that the adjustment is not inconsistent with the terms of this Agreement. Those Grievances reduced to writing and resolved without Union representation shall be documented and forwarded to the Union within ten (10) working days.

2. The following definitions shall apply for the purposes of this Agreement:
 - a. Grievance shall mean a complaint by an employee that, as to such employee, the Town has interpreted and applied the Agreement in violation of a specific provision thereof.
 - b. An aggrieved employee shall mean the employee making the complaint.

For purposes of this Article, "working days" shall mean Monday through Friday, exclusive of legal holidays.

3. A matter which is not specifically covered by this Agreement or which is reserved either by this Agreement or by common or statutory law to the employer is not subject to the arbitration procedure set forth in Article XV. Only Grievances, as defined above, may be arbitrated under the provisions of Article 11.
4. Since it is important that Grievances be processed as quickly as possible, the number of days indicated at each level shall be considered as maximum. The time limits specified may be extended only by prior written mutual agreement.
5. The processing of Grievances shall be undertaken in accordance with the following procedures:

A written Grievance must be made to the employee's Department Head within five (5) working days of the action giving rise to the Grievance. The appeal must include the issue giving rise to the Grievance, the facts as the employees viewed them and the requested relief. The Department Head will respond to this appeal within five (5) working days. If the employee is not satisfied with the action to be taken by his/her Department Head, the employee may appeal the matter to the Town Administrator within five (5) working days to the Department Head's decision.

The Town Administrator will, within seven (7) working days of the request, meet with the aggrieved employee and all involved parties, hear testimony and render a decision

ARTICLE 11

ARBITRATION

1. In the event that the Union elects to proceed to Arbitration, the Administrator or his designee and the Union will endeavor to agree upon a mutually acceptable Arbitrator and obtain a commitment from said Arbitrator to serve. If the Parties are unable to agree upon an Arbitrator or to obtain a commitment to serve, the Grievance shall be referred to the American Arbitration Association by the Union no later than twenty (20) days after the receipt of the notice of submission to Arbitration (Article 10). In such an event, the Arbitrator shall be selected in accordance with the rules of the American Arbitration Association, then applicable to voluntary labor Arbitrations.
2. The Town and the Union agree that they will individually be responsible for their own costs, preparation and presentation. The Town and the Union further agree that they shall equally share in the compensation and the expenses of the Arbitrator.
3. The function of the Arbitrator is to determine the interpretation of specific provisions of this Agreement. There shall be no right in Arbitration to obtain and no Arbitrator shall have any power or authority to award or determine any change in, modification or alteration of, addition to, or detraction from any other provisions of this Agreement. The Arbitrator may or may not, make his award retroactive to the initial filing date of the Grievance as the equities of the case may require.
4. Each Grievance shall be separately processed at any Arbitration proceeding hereunder unless the Parties otherwise agree.
5. The Arbitrator shall furnish a written opinion specifying the reasons for his decision. The decision of the Arbitrator, if within the scope of his authority and power within this Agreement, shall be final and binding upon the Union and the Town and the aggrieved employee who initiated the Grievance.

ARTICLE 13

OVERTIME/SHIFT DIFFERENTIAL

1. The Town shall compensate employees covered by this Agreement at time and one-half their base rate of pay for all hours worked in excess of 40 hours in any one workweek, or any hours worked in excess of eight (8) hours in any one workday.
2. In addition, the Town shall compensate employees at time and one-half their base rate of pay for all hours worked before 7:00 A.M., or after 3:30 P.M., except as follows:

When one week's notice is given by the Public Works Director as to a temporary change in the workday. When that notice is given, a fifty-cent (\$0.50) per hour differential shall be paid for those hours worked before 7:00 AM or after 3:30 PM.

It is expressly understood that this section pertains to temporary shift changes in the Highway Department, and that the Town's ability to assign shifts and compensate employees through shift differentials is not otherwise altered.
3. EMERGENCY WORK: It shall be the duty of all able-bodied employees to make themselves available for work during the course of emergencies. An emergency shall be defined by the Director of Public Works and shall include but not be limited to the following:

Any natural or man-made condition which halts or hinders a public service or which endangers public safety.

Employees covered by this Agreement shall be paid double time for all work performed in excess of sixteen (16) consecutive hours as the result of snow or other emergencies as determined by the Public Works Director.
4. The parties agree that overtime work shall be assigned on a rotating basis, among all qualified employees.
5. No temporary employees, as defined by the Public Employees Labor Relations Board, shall be assigned to overtime work until all regular employees shall have had the opportunity for such assignment.
6. Any employee who is called back to work, having completed eight (8) hours of work that day, shall receive a minimum of three (3) hours pay at time and one-half the normal rate.
7. In the event that either party wishes to consider payment by the task rather than by the hour for duties performed, the parties agree to convene a labor management committee to discuss the concept and the administrative details which could be put into effect. If both parties agree, the Agreement may be amended to comply with the committee's recommendations.
8. Notwithstanding anything to the contrary above, the employee designated, as the "landfill attendant" shall be regularly scheduled for two (2) consecutive days off in each seven (7) day period.

ARTICLE 15

HOLIDAYS

1. Employees shall be entitled to regular full pay for the following eleven (11) holidays:
 - New Year's Day
 - Civil Rights Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Columbus Day
 - Veteran's Day
 - Thanksgiving Day
 - the Day after Thanksgiving Day
 - Christmas Day
 - the Day before or after Christmas Day
2. All work performed on a holiday shall be at the rate of time and one-half over and above the eight hours pay for the holiday, for all hours worked. This holiday pay shall apply only if the employee works the regular eight (8) hour day preceding and following the particular holiday, unless he or she is on scheduled vacation leave.
3. During the period of April 15 through October 15, employees will be compensated ten (10) hours holiday pay if a ten (10) hour workday is missed.

ARTICLE 17

SICK LEAVE

1. Employees will earn sick leave at a rate of 8 hours per month. New employees hired no later than the 10th of the month will receive credit for that initial month. Sick leave will be made available and credited for use on the first of each month. Employees scheduled to work less than 40 hours per week shall not earn sick leave.

2. Unused sick leave may be accumulated over the term of employment as follows:

COMPLETED YEARS	ACCRUAL RATE	MAXIMUM LEAVE ACCRUAL
0-5	8 hours/month	380 hours
6 or more	8 hours/month	*840 hours

*As of October 1, 2000, Brian Beers and Daniel Driscoll have accumulated more than 840 hours of sick leave. They shall retain the amount accumulated as of October 01, 2000, but shall not accumulate any further (i.e. if either employee uses any hours of his accumulated sick leave, then he shall be allowed accumulation in the expended amount).

3. Employees who voluntarily terminate their employment with the Town with at least thirty (30) days notice shall receive payment for their accrued sick leave as follows:

0 to 5 years of service -	Ten (10%) percent
6 to 9 years of service -	Fifteen (15%) percent
10 or more years of service -	Twenty-Five (25%) percent

Employees who are involuntarily terminated, or who leave without the required thirty (30) days notice, shall forfeit all sick leave payments.

4. Verification of illness/disability from a medical doctor may be required by Department Heads at any time and shall be required for sick leave in excess of three (3) consecutive days.
5. Probationary employees will accrue sick leave but may not draw leave or sick pay for time off taken due to illness during their probationary period. Probationary employees who do not achieve permanent status shall forfeit any accrued sick leave.
6. Sick leave may be legitimately drawn in the event of the following: absences due to illness, injury or exposure to contagious diseases endangering the health of other employees when requested by the attending physician, medical and dental appointments, and care of immediate family members whose illness or condition requires the employee to remain at home (care beyond three days requires approval by Town Administrator). Employees absent for such reasons must report their absence to Department Heads within one hour of their regularly scheduled starting time.

ARTICLE 19

PERSONAL LEAVE

1. Personal leave shall be granted with pay similar to vacation leave and is intended to afford the employee with the opportunity to address unanticipated events or emergencies of short duration.
2. Full-time employees are awarded personal days after completion of one (1) year of service and thereafter on the employee's anniversary date. Personal days off may be earned at a rate of one (1) day per year for those employees with less than six (6) years of service. Those employees having six (6) or more years of service will be entitled to three (3) days per year. Personal days must not be accumulated beyond twenty-four (24) hours and must be used within twelve (12) months of the time they are earned.
3. Notice equivalent to that expected for sick leave is required for the use of these days.
4. There will be no payment of these benefits upon termination.
5. During the 4/3 work week schedule no personal day may be used unless the purpose for its use cannot be scheduled either outside of work hours or on the employees scheduled days off.

ARTICLE 21

FAMILY LEAVE

Qualified employees shall be granted up to twenty-six (26) weeks of unpaid leave in any twelve (12) month period for:

1. The birth and first year care of a child;
2. Adoption or foster placement of a child in the employee's home (use of a licensed adoption agency is not required, but foster placement requires State action rather than merely an informal arrangement to care for another person's child);
3. The care of a spouse, child or parent with a serious health condition; or
4. The serious health condition of the employee.

Employees must give thirty (30) days advance written notice to the Town of Durham of the need to take unpaid FMLA leave when it is foreseeable for the birth or placement of a child, for adoption or for planned medical treatment. When planning medical treatment, employees should consult with their Department Head and make reasonable efforts to schedule the leave so as not to unduly disrupt the Town's operation. This is subject to the approval of the healthcare provider. If employees fail to provide the Town with the thirty (30) day notice, the Town may deny the leave until thirty (30) days after the notice is provided.

When the leave is unforeseeable, employees must give notice as soon as practicable, but no later than two (2) working days. Notice should be given either in person or by phone when medical emergencies are involved, and may be given orally by the employee's spouse or other family member if the employee is unable to give the notice.

When the FMLA leave is for medical reasons, employee or employee's family, medical certification of a serious health condition may be requested. The Town of Durham at the Town's expense, may also request a second opinion.

If the opinions of the healthcare providers furnishing the first and second opinions differ, the Town may request the employee to obtain a final and binding third opinion at the Town's expense.

If the employee will be out longer than thirty (30) days for a serious health condition, for him/herself or a family member, a "recertification" of medical condition will be required to be submitted on a monthly basis.

If an employee is out on medical leave for him/herself, the employee must submit a "fitness-for-duty" certification before he/she will be reinstated for work.

ARTICLE 22

MILITARY AND CIVIC LEAVE

1. Military and Civic Duty leave shall be governed by existing laws.
2. JURY DUTY: An employee called as a juror will be paid the difference between the fee received for such service and the amount of straight time earnings lost by reason of such services. Satisfactory evidence of such service must be submitted to the employee's immediate supervisor.

Employees who are called to jury duty and are excused from jury duty for a day or days shall report to their regular work assignment. If any employee is excused from jury duty within three (3) hours prior to the end of his/her normal shift, he/she shall report to work.

ARTICLE 24

LONGEVITY PAY

Longevity pay will be granted to all permanent full-time employees as a means of compensating such employees for long-term service to the Town. Such pay shall be paid by check by the end of the first payroll in December.

LENGTH OF SERVICE
(COMPLETED YEARS)

5-9 Years	\$150.00*
10-14 Years	\$400.00
15-19 Years	\$550.00
20 and above	\$700.00

* Only employees hired before January 01, 2000 will be eligible to receive this payment when applicable.

ARTICLE 26

WORKER'S COMPENSATION

All employees of the Public Works Department who become injured while in the performance of their duties shall receive Worker's Compensation while on leave. If the absence is caused by accident, compensable under Worker's Compensation, then the Town shall pay the difference between Worker's Compensation and the employee's regular pay during the employee's Worker's Compensation eligibility utilizing the employee's accumulated sick and vacation leave. The employee shall have the sole and exclusive right to decline this utilization of his/her accumulated sick and annual leave and receive only worker's compensation payments.

ARTICLE 28

SAFETY

The Department shall continue to have the right to make and modify regulations for the safety and health of its employees during their hours of employment. Representatives of the Department and the Union may meet once in ninety (90) days at the request of either party to discuss such regulations.

ARTICLE 30

BULLETIN BOARDS

1. The Department shall provide space on bulletin boards for the posting of notices of the Department addressed to the employees and for notices of the Union addressed to its members and other members of the Bargaining Unit. No notices shall be posted in or around the Town property except on such boards and then only after approval by the Department as being suitable for posting. No Union notice shall be posted until it shall have been signed by the President or Secretary of the Union. Job openings shall be posted by the Town on Departmental bulletin boards.
2. All positions, promotions or transfers shall be posted on the Department bulletin boards for at least five (5) working days and any interested employee shall have the opportunity to apply for such position, promotion or transfer.

ARTICLE 32

WAGE SCALE AND PAY PLAN

The wage schedule will increase by two percent (2%) in each of the years 2007, 2008 and 2009.

2007							
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
I		14.77	14.91	15.07	15.21	15.37	15.52
II	15.44	15.81	15.97	16.13	16.28	16.45	16.62
III	16.67	17.07	17.24	17.42	17.60	17.78	17.95
IV	17.93	18.50	18.69	18.87	19.05	19.25	19.44
TRADESMAN	19.23	19.94	20.15	20.34	20.55	20.76	20.96
V	20.53	21.38	21.58	21.81	22.03	22.26	22.48
2008							
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
I		15.06	15.21	15.37	15.51	15.68	15.83
II	15.75	16.13	16.29	16.45	16.60	16.78	16.95
III	17.00	17.42	17.58	17.77	17.95	18.13	18.31
IV	18.29	18.87	19.06	19.25	19.43	19.63	19.83
TRADESMAN	19.61	20.34	20.55	20.75	20.96	21.17	21.38
V	20.94	21.81	22.01	22.24	22.47	22.70	22.93
2009							
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
I		15.37	15.51	15.67	15.82	15.99	16.15
II	16.07	16.45	16.62	16.78	16.94	17.12	17.29
III	17.34	17.76	17.93	18.13	18.31	18.50	18.68
IV	18.66	19.25	19.44	19.63	19.82	20.02	20.23
TRADESMAN	20.00	20.75	20.96	21.16	21.38	21.60	21.81
V	21.36	22.24	22.46	22.69	22.92	23.16	23.39

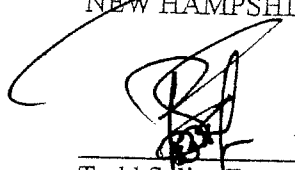
ARTICLE 33

SAVING CLAUSE

In the event that any Article, Section or portion of this Agreement be in violation of State law or Town ordinance or be found to be unlawful and unenforceable by any Court of competent jurisdiction, or have the effect of loss to the Town of funds made available through Federal law, rule or regulation, then such specific Article, Section or portion shall be amended to the extent necessary to conform with such law, rule or regulation, but the remainder of this Agreement shall continue in full force and effect.

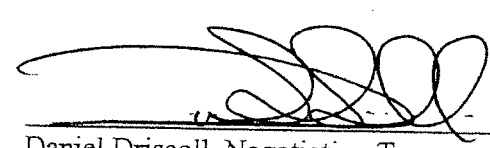
IN WITNESS WHEREOF, the parties to this Agreement have caused it to be signed by their duly authorized officers and/or representatives this 27th day of NOVEMBER, 2007.

FOR THE TOWN OF DURHAM,
NEW HAMPSHIRE

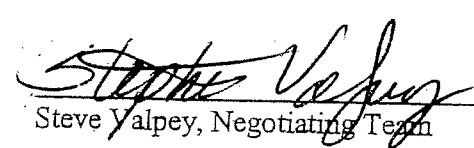


Todd Selig, Town Administrator

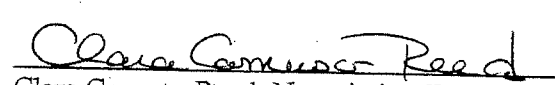
FOR THE AFSCME COUNCIL 93,
LOCAL 863



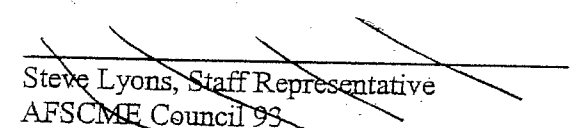
Daniel Driscoll, Negotiating Team



Steve Valpey, Negotiating Team



Clara Camuso-Reed, Negotiating Team



Steve Lyons, Staff Representative
AFSCME Council 93